

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11
12 UNITED STATES OF AMERICA,)
13)

14 Plaintiff,)

15 v.)

16)
17 Defendant.)
18)
19)

CR - DSF

**CRIMINAL MOTION,
TRIAL, AND SENTENCING
ORDER**

20 This matter has been assigned to the Honorable Dale S. Fischer, United
21 States District Judge, Courtroom 840, Roybal Federal Building, 255 E. Temple St.,
22 Los Angeles, California, 90012.
23

24 **A. GENERAL REQUIREMENTS**

25 1. The captioned title of every pleading shall contain the name of the
26 first-listed defendant as well as the name(s) and number(s) (in the order listed in
27 the indictment) of the particular defendant(s) to whom the pleading applies, unless
28

1 the document applies to all defendants. The individual defendant's registration
2 number (if known) should be provided on any document pertaining to defendant's
3 custody status (e.g., requests for transfer, medical requests). All parties shall
4 docket items only as to the particular defendant(s) the item pertains to, not as to all
5 defendants, unless the item pertains to all. With the exception of documents filed
6 under seal, every pleading shall be electronically filed in such a way that it is clear
7 from the docketing entry to which defendants it applies. The outer envelope
8 containing any pleading filed under seal should identify only the case title with
9 first-listed defendant and case number, and should state that the document is filed
10 under seal.
11

12 2. Mandatory paper Chambers copies of all e-filed documents must be
13 delivered to Judge Fischer's box across from the Clerk's office on the first floor of
14 the Roybal Federal Building - by noon on the day after filing. Documents will not
15 be considered until paper Chambers copies are submitted. Attach the NEF to the
16 BACK of the Chambers copy. Chambers copies delivered by Federal Express
17 should not require the signature of the recipient. The Court will not rule on
18 stipulations, ex parte applications, etc. until the mandatory paper Chambers copies
19 have been received.
20

21 B. EX PARTE APPLICATIONS AND MOTIONS

22

23 1. Ex parte applications are disfavored. The Court is unlikely to grant an
24 ex parte application that recites that the moving party has been unable to obtain the
25 position of the opposing party. Counsel should make serious efforts to obtain the
26 agreement (or at least the position) of opposing counsel before filing an
27 application.
28

1 2. Ex parte applications to allow defendant to travel should be made well
2 in advance of the date of travel. Counsel should indicate whether the pretrial
3 services officer has approved the travel. Applications by defendants with
4 appointed counsel must indicate who will pay for the travel and related expenses.
5 If these expenses are not to be paid by the defendant's employer, the Court may
6 require declarations under penalty of perjury from the persons paying the expenses.
7

8 3. Pretrial motions shall be filed on or before the Monday preceding four
9 weeks before trial. Counsel must meet and confer with opposing counsel and
10 attempt to resolve the issue before filing a motion. Motions expected to take more
11 than one-half hour of court time must include a time estimate beneath the hearing
12 date on the face page of the motion.

13 Oppositions (or notices of non-opposition) shall be filed no more than
14 one week after the filing of the motion.

15 Replies (optional) shall be filed no more than one week after the filing
16 of the opposition.

17 Adherence to these timing requirements is essential to Chambers'
18 preparation of motion matters. Counsel must follow the Central District's General
19 Orders and Local Rules concerning electronic filing, unless superseded by this
20 Order.

21 4. Memoranda of Points and Authorities in support of or in opposition
22 to motions shall not exceed 25 pages. Replies shall not exceed 12 pages. Only in
23 rare instances and for good cause shown will the Court grant an application to
24 extend these page limitations. No supplemental brief shall be filed without prior
25 leave of court. **Typeface shall comply with Local Rule 11-3.1.1. (Civil).**

26 **NOTE: If Times Roman font is used, the size must be no less than 14; if**
27 **Courier is used, the size must be no less than 12.** Footnotes shall be in typeface
28

1 no less than one size smaller than text size and shall be used sparingly.

2 5. Filings that do not conform to the Local Rules and this Order may not
3 be considered.

4 6. Before filing any motion for discovery, a party shall consult with
5 opposing counsel to ascertain whether the requested discovery will be provided.
6 All discovery motions shall state with particularity what is requested, the basis for
7 the request, whether the discovery has been requested from opposing counsel, and
8 whether the discovery has been declined, in whole or in part. Motions made
9 without prior consultation with opposing counsel or that fail to include the above
10 information may not be heard.
11

12 C. DISCOVERY & NOTICE

13
14

15 Counsel shall comply promptly with discovery and notice pursuant to Rules
16 12, 12.1, 12.2, 12.3, 12.4, 15, and 16 of the Federal Rules of Criminal Procedure.
17 On government counsel's discovery of any evidence within the scope of Brady v.
18 Maryland, 373 U.S. 83 (1963), and related cases, such evidence shall be produced
19 forthwith to counsel for the defendant. Counsel for the government shall also
20 disclose to counsel for defendant the existence or non-existence of: (1) evidence
21 obtained by electronic surveillance; and (2) testimony by a government informant.
22

23 D. TRIAL REQUIREMENTS

24

25 1. **No later than one week before trial**, counsel for the government
26 shall file with the Court:

27 a. In camera (under seal) all statements of all witnesses to be called
28

1 by the Government in its case-in-chief;

2 b. A trial memorandum setting forth a factual summary of the
3 government's case, a statement of the charges and the elements of each charge, an
4 estimate of the length of the government's case in chief, including anticipated
5 cross-examination, the names of witnesses the government intends to call, and a
6 discussion of relevant legal and evidentiary issues as applied to the facts of the
7 particular case. Counsel for the government shall attempt to obtain defense
8 counsel's agreement to the factual summary, statement of the charges, time
9 estimate for cross-examination of the government's witnesses, and legal and
10 evidentiary issues.
11

12 2. Counsel shall arrive at the Courtroom no later than 8:30 a.m. on the
13 first day of trial.

14 3. Counsel for the government shall present the courtroom deputy clerk
15 (CRD) with the following:

16 a. The government's witness list, which shall be sent in Word or
17 WordPerfect format to the Chambers email box no later than noon on the Monday
18 before trial;

19 b. The government's exhibit list in the form specified in Local Rule
20 16-5 (Civil), which shall be sent in Word or WordPerfect format to the Chambers
21 email box no later than noon on the Monday before trial;

22 c. All of the government's exhibits, with official exhibit tags attached
23 and bearing the same number shown on the exhibit list. Exhibit tags may be
24 obtained from the receptionist in the Public Intake Section, located on the Main
25 Street level of the courthouse at 312 North Spring Street, Room G-19. Exhibits
26 shall be numbered 1, 2, 3, etc., NOT 1.1, 1.2, etc. If a "blow-up" is an enlargement
27 of an existing exhibit, it shall be designated with the number of the original exhibit
28

1 followed by an “A.” These items (and the items listed in d and e below) shall be
2 provided on the first day of trial;

3 d. A three-ring binder containing a copy of the
4 indictment/information, a copy of all exhibits that can be reproduced, and a copy of
5 the witness list. Each exhibit shall be tabbed with the exhibit number for easy
6 reference;

7 e. A three-ring binder containing a copy of all exhibits for use by
8 witnesses.
9

10 4. Exhibits such as firearms, narcotics, etc., must remain in the custody
11 of a law enforcement agent during the pendency of the trial. It shall be the
12 responsibility of the agent to produce any such items for court, secure them at night
13 and guard them at all times while in the courtroom. The United States Marshals
14 Service shall be advised if weapons or contraband is to be brought into the
15 courthouse.

16 5. The Court prefers that defense counsel email witness and exhibit lists
17 to the Chambers email box by noon on the Monday before trial and provide
18 defense exhibits to the CRD on the first day of trial, but counsel are not required to
19 do so unless these witness names and exhibits have previously been provided to the
20 government. Defense counsel are responsible for attaching completed exhibit tags
21 with the case name and case number to all exhibits to be used in defendant’s case.
22 Defense counsel should be sure that defense exhibit numbers do not duplicate
23 government exhibit numbers.

24 6. In trials where the defense expects to admit more than 20 exhibits,
25 defense counsel shall provide two three-ring binders (one for the Court and one for
26 witnesses), tabbed if possible with numbers to correspond to the exhibits counsel
27 expects to introduce. Defense counsel shall provide the Court with a copy of
28

1 defense exhibits as they are introduced during trial, if they have not previously
2 been provided.

3 7. Defense counsel shall email to the Chambers email box and provide
4 the CRD and the court reporter with the defense witness list and defense exhibit list
5 at the start of the defense case, if they have not previously done so.

6 8. At least one week before trial, the parties must provide a case-specific
7 glossary for the court reporter that includes applicable medical, scientific, or
8 technical terms, gang terms, slang, the names and spellings of case names likely to
9 be cited, street/city/country names, all parties/agents/departments/entities involved
10 in the case, names of people interviewed/deposed, names of family members,
11 friends, or others who might be mentioned, and other case-specific terminology.

12 9. A copy of the exhibit list with all **admitted exhibits** will be given to
13 the jury during deliberations. Government and defense counsel shall review and
14 approve the exhibit list with the CRD before the list is given to the jury.

15 10. Counsel should consider such devices as overhead projectors, jury
16 notebooks for admitted exhibits, or enlargements of important exhibits. The Court
17 has an Elmo and other equipment available for use during trial. Information
18 concerning training on the use of electronic equipment is available. Details are
19 posted on the Court's website. To make reservations for training, call 213-894-
20 3061. The Court does not permit exhibits to be "published" by passing them up
21 and down the jury box. Exhibits may be displayed briefly using the screens in the
22 courtroom, unless the process becomes too time-consuming.

23 11. Counsel shall not attempt to display or use any charts or enlargements
24 of exhibits unless all counsel have agreed to their use or objections have been
25 heard and a ruling has been made.

26 12. On the day of jury selection, trial will begin at 9:00 a.m. Counsel will
27
28

1 appear at 8:30 a.m. Thereafter, trial days are Tuesday through Friday, 8:00 a.m. to
2 2:00 p.m., with three fifteen-minute breaks during the session. When necessary,
3 trials may continue beyond the normal schedule. If counsel contemplate that this
4 schedule will be problematic due to the unavailability of witnesses, counsel should
5 provide details to the Court at the Status Conference.
6

7 13. On the day of jury selection, the Court reserves the time from 8:30
8 a.m. to 9:00 a.m. to handle legal and administrative matters. Jury selection will
9 commence promptly at 9:00 a.m. or as soon as jurors are available. Thereafter,
10 legal and administrative matters shall be addressed between 7:45 a.m. and 8:00
11 a.m. All counsel are urged to anticipate matters that may need to be addressed
12 outside of the presence of the jury and to raise them during this period, during
13 breaks, or at the end of the day. The Court does not make jurors wait while
14 counsel discuss matters that should have been addressed previously. Counsel are
15 urged to consider any unusual substantive or evidentiary issues that may arise, and
16 to advise the Court of such issues. Short briefs addressing such disputed issues are
17 welcome.

18 14. Before trial begins, the Court will give counsel an opportunity to
19 discuss administrative matters and anticipated procedural or legal issues. Before
20 trial begins, and as soon as the information becomes available to counsel, counsel
21 should advise the court of any concerns or accommodations that are requested for
22 parties or witnesses. During trial, if there are any matters to be discussed outside
23 the presence of the jury, counsel shall advise the CRD of the request. The Court
24 discourages sidebars during trial.
25
26
27

28 E. JURY INSTRUCTIONS, VERDICT FORMS & QUESTIONNAIRES

1 **1. No later than the Monday one week before trial**, counsel shall
2 submit both general and substantive jury instructions in the form described below.
3 If possible, all instructions should be taken from the Manual of Model Criminal
4 Jury Instructions for the Ninth Circuit (West Publishing, current edition). Where
5 no applicable Ninth Circuit model instruction is available, counsel should consult
6 the instructions manuals from other circuits or O'Malley, Grenig & Lee (formerly
7 Devitt, et al.), Federal Jury Practice and Instructions (West Publishing Co., current
8 edition). When submitting other than Ninth Circuit instructions, counsel should be
9 sure that the law on which the instruction is based is the same as Ninth Circuit law
10 on the subject. Counsel may submit alternatives to the Ninth Circuit model jury
11 instructions, other circuit manuals, or O'Malley, Grenig & Lee instructions only if
12 counsel has a reasoned argument that those instructions do not properly state the
13 law or they are incomplete.

15 **2. The parties must submit JOINT jury instructions and a JOINT**
16 **proposed verdict form.** In order to produce these joint instructions, the parties shall
17 meet and confer sufficiently in advance of the required submission date with the
18 goal of agreeing on instructions and verdict forms. Where the parties cannot agree,
19 disputed instructions shall be filed and submitted (electronically to the Chambers
20 email box and in paper form) on the Monday one week before trial as follows: 1)
21 JOINT jury instructions (those instructions agreed to by all parties), and 2)
22 DISPUTED jury instructions (those instructions propounded by a party to which
23 another party objects). On a separate page following each disputed jury
24 instruction, the party opposing the instruction shall briefly state the basis for the
25 objection, any authority in support thereof and, if applicable, an alternative
26 instruction. On the following page, the party proposing the disputed instruction
27 shall briefly state its response to the objection, and any authority in support of the
28

instruction. Each requested jury instruction shall be numbered and set forth in full on a separate page, citing the authority or source of the requested instruction.

3. Jury instructions should be modified as necessary to fit the facts of the case (e.g., inserting names of defendant(s) or witness(es) to whom instruction applies). Where language appears in brackets in the model instruction, counsel shall select the appropriate text and eliminate the inapplicable bracketed text.

4. An index page shall accompany all jury instructions submitted to the Court. The index page shall indicate the following:

- a. The number of the instruction;
- b. A brief title of the instruction;
- c. The source of the instruction; and
- d. The page number of the instruction.

EXAMPLE:

Number	Title	Source	Page Number
#1	Conspiracy-Elements	9th Cir. 8.20	1

5. One or more copies of the instructions will be given to the jury during deliberations. Counsel must submit to the Chambers email box a “clean” set of all instructions in Word or WordPerfect format, containing only the text of each instruction, set forth in full on each page, with the caption “Instruction No. ____” (eliminating titles, supporting authority, indication of party proposing, etc.). A paper Chambers copy must also be submitted.

6. Counsel shall submit a proposed verdict form with the jury instructions.

7. At least one week before trial, each counsel must file any proposed questions to be asked of prospective jurors.

1 F. INSTRUCTIONS GOVERNING PROCEDURE DURING TRIAL

2
3 1. Counsel shall not refer to any witness -- including a client -- more
4 than 14 years of age by his/her first name during trial.

5 2. Counsel shall not discuss the law or argue the case in opening
6 statements.

7 3. Counsel shall not use objections for the purpose of making a speech,
8 repeating testimony, or attempting to guide the witness. When objecting, counsel
9 shall stand, state only the legal ground of the objection, e.g., hearsay, irrelevant,
10 etc. Counsel shall not argue an objection before the jury. Requests to approach
11 sidebar to further argue an objection should be made sparingly, and may not be
12 granted.

13 4. Counsel shall not make facial expressions, nod, or shake their heads,
14 comment, or otherwise exhibit in any way any agreement, disagreement, or other
15 opinion or belief concerning the testimony of a witness. Counsel shall admonish
16 their clients and witnesses not to engage in such conduct.

17 5. Counsel should not talk to jurors at all, and should not talk to co-
18 counsel, opposing counsel, witnesses, or clients where the conversation can be
19 overheard by jurors. Each counsel should admonish counsel's own clients and
20 witnesses to avoid such conduct.

21 6. Counsel shall question witnesses from the lectern. Counsel shall not
22 approach the witness box or enter the well without the Court's permission, and
23 shall return to the lectern when counsel's purpose has been accomplished.

24 7. Counsel should speak clearly when questioning witnesses, making
25 objections, etc.

26 8. No document shall be placed before a witness or shown to the jury
27
28

1 unless a copy has been provided to the Court and opposing counsel.

2 9. Counsel shall rise when addressing the Court. In jury trials, counsel
3 and the defendant shall rise when the jury enters or leaves the courtroom. Special
4 procedures or exceptions may apply when the defendant is restrained or otherwise
5 unable to rise.

6 10. In trial, all remarks shall be addressed to the Court. Counsel shall not
7 directly address the CRD, the court reporter, or opposing counsel. All requests for
8 re-reading of questions or answers, or to have an exhibit placed in front of a
9 witness, shall be addressed to the Court
10

11 11. Counsel should not offer a stipulation without having conferred with
12 opposing counsel and having reached an agreement. Any stipulation of fact will
13 require defendant's personal concurrence and shall be submitted to the Court in
14 writing for approval. A proposed stipulation should be explained to defendant in
15 advance.

16 12. While court is in session, counsel shall not leave counsel table to
17 confer with investigators, paralegals, secretaries, witnesses, etc. unless permission
18 is granted in advance.

19 13. When a party has more than one lawyer, only one lawyer may conduct
20 the examination of a given witness, and only that same lawyer may handle
21 objections during the testimony of that witness.

22 14. If a witness was on the stand at a recess or adjournment, counsel who
23 called the witness shall ensure the witness is back on the stand and ready to
24 proceed when trial resumes.

25 15. Counsel are directed to have witnesses available throughout the court
26 day. If no witnesses are available and there is more than a brief delay, the Court
27 may deem counsel to have rested.
28

1 16. The Court attempts to cooperate with expert witnesses and other
2 professionals, and will, except in extraordinary circumstances, accommodate them
3 by permitting them to be called out of sequence. Counsel are urged to anticipate
4 any such possibility and to discuss it with opposing counsel. If there is an
5 objection, counsel shall confer with the Court in advance.
6

7 17. Counsel must notify the CRD in advance if any witness should be
8 accommodated based on the Americans with Disabilities Act or for other reasons.

9 18. Counsel are ordered to be on time, as the Court makes every effort to
10 start promptly.

11
12 G. SENTENCING
13

14 1. Sentencing positions should be filed in accordance with the Court's
15 order. Requests for continuance are discouraged, as the order provides for
16 sufficient time for counsel to prepare their position papers. That the parties have
17 stipulated to a continuance will not ensure that it will be granted.

18 2. The Court discourages the use of sentencing videos. If counsel
19 believes a video is necessary, it should not be longer than 10 minutes. Videos will
20 not be considered unless a transcript is provided.

21 3. Sentencing is a matter of significant public interest and concern.
22 Generally, the public has a right to know the basis on which the Court makes
23 sentencing determinations. Therefore, the Court discourages under seal filings of
24 entire sentencing documents. Sentencing documents may be filed under seal along
25 with a redacted version that deletes *only* information that is properly filed under
26 seal, and an explanation of the basis for each document or portion deleted, *e.g.*,
27 medical information, private information relating to family members (which
28

1 explanation may be filed under seal). If all or nearly all of the sentencing position
2 contains such information, counsel may seek leave to file the entire document
3 under seal.
4

5 IT IS SO ORDERED.
6

7 Dated:
8

9
10 _____
11 Dale S. Fischer
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28